

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA

Valerie Donnelly,	)	Civil Action No.: 8:15-737-BHH
	)	
	Plaintiff,	
	)	
vs.	)	<b>ORDER AND OPINION</b>
	)	
C. McFerrin Smith, III,	)	
	)	
	Defendant.	
	)	
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The plaintiff Valerie Donnelly (“the plaintiff”), proceeding *pro se*, brought this action against the defendant C. McFerrin Smith, III (“the defendant”) , alleging that the defendant violated federal discovery acts as well as Florida rules and regulations related to probate matters. (Compl., ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling and a Report and Recommendation. Magistrate Judge Austin recommends that District Court dismiss this action without prejudice and without issuance and service of process. (ECF No. 18.) The Report and Recommendation sets forth in detail the relevant background and standards of review and the Court incorporates them without recitation.

**BACKGROUND**

On April 7, 2015, the Magistrate Judge issued a Report and Recommendation recommending that this action be dismissed. (ECF No. 18 at 7.) On April 15, 2015, the plaintiff filed objections (ECF No. 20), and then filed a motion to formally serve summons on defendant (ECF No. 27) on July 9, 2015.

### **STANDARD OF REVIEW**

The Magistrate Judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation (the “Report”) to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a *de novo* review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005).

### **DISCUSSION**

The magistrate judge prepared an extensive and detailed Report recommending dismissal of the plaintiff’s case because this Court does not have subject matter jurisdiction over the action. (ECF No. 18 at 6.) The magistrate judge found further that, even if subject matter jurisdiction existed, because the defendant’s “alleged misconduct arose out of his judicial actions, judicial immunity squarely applies and should bar this lawsuit.” (ECF No. 18 at 7.) The plaintiff objects to the dismissal of her case. (ECF No. 20.) She attempts to clarify that her request is in fact for \$75,000.00. She also argues that judicial immunity

does not protect the defendant because he acted “corruptly and maliciously.” (Obj. at 3.) Regardless of any attempt to amend the amount in controversy, the Court agrees that the probate exception is a jurisprudential limit on diversity jurisdiction. *See Turja v. Turja*, 118 F.3d 1006, 1008–10 (4th Cir. 1997). She is not seeking relief that is “incidental” to relief sought in connection with the will. *Id.* at 1008. To the contrary, she claims that the defendant “did not follow” the will. (Compl. at 1.)

Having conducted a *de novo* review of all portions of the Report and Recommendation to which the plaintiff has objected, the Court finds that the Magistrate Judge fairly and accurately summarized the facts and applied the correct principles of law.

### **CONCLUSION**

For the reasons stated above and by the Magistrate Judge, the court overrules Plaintiff's objections and adopts and incorporates by reference the Magistrate Judge's Report and Recommendation. Accordingly, the action is DISMISSED without prejudice and without issuance and service of process. The plaintiff's motion to formally serve summons (ECF No. 27) is denied as moot.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks  
United States District Judge

August 26, 2015  
Greenville, South Carolina

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### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.